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legislative right to changes in the legal character of estates and the titles to property.

An estate is a man's interest in property. The legal character of a man's interest in property is the nature, qualities or relations, under the law, of that interest.

It may be viewed with respect to the property of other men, and the remedies for securing its rights and redressing its wrongs, considered; or it may be viewed with respect to its own nature alone, and its kinds, ownership, or title considered. The changes that may be effected are as varied as the relations of property. Among them may be enumerated the change in its character from converting real into personal, or personal into real property. Again, real property may be changed by changing the quantity of interest therein, whether freehold or less than freehold, the time of its enjoyment, whether in possession, remainder or reversion, or the number and connections of the tenants, whether in severalty or in common. Personal property may be changed in its character as a chose in possession or in action. Again, a very radical, indeed the most important change that can take place in the legal character of both real and personal property, is effected by a change in its title, by a transfer of its ownership from one individual to another individual, or set of individuals. The legal character of property is also affected and indirectly changed by altering the remedies provided for enforcing its rights.¹

W. W. B.

Cambridge, Mass.

RECENT AMERICAN DECISIONS.

In the Court of Common Pleas of Philadelphia County.—In Equity.

MITCHESON vs. HARLAN AND OTHERS.

1. The duty of the Governor in granting letters patent to a corporation under the general railroad law of 1849, in Pennsylvania, upon the certificate of the commissioners named in the special act of incorporation that the provisions of the general law have been complied with, is of a discretionary, and not of a ministerial nature, and cannot, therefore, be interfered with by injunction or mandamus.

¹ A second article has been prepared on this interesting branch of law, and will appear in our next number.—*Eds. Am. Law Reg.*

2. The commissioners named in a special act of incorporation under the general railroad law having, as was alleged, acted, in taking the subscriptions to the stock of the company, in a fraudulent and illegal manner, a bill was filed on behalf of persons who had been thus prevented from subscribing, to restrain the promoters of the company from applying for letters patent, and from proceeding to organize the company by the election of officers and otherwise, and also to have the former subscriptions declared void, and the commissioners directed to open a new subscription, and for these purposes an injunction was applied for. The Governor in the meantime granted the letters patent, which fact was alleged in a supplemental bill. The injunction was refused by the court, on the ground, that it was too late to prevent the issuing of the letters, and that to prevent the further organization of the company would amount to a forfeiture of the charter, which could only be done at law by *scire facias* or *quo warranto*.
3. Where the original bill is for any reason fatally defective, it cannot be made the basis of a supplemental bill.

This was an application for an injunction to restrain the defendants, commissioners named in an act of Assembly incorporating the Philadelphia City Passenger Railroad Company, from making application to the Governor for letters patent, and from further proceeding with the organization of said company. The particulars set forth in the bill filed, and the nature of the relief prayed for, will more fully appear in the opinion of the court, which was delivered by

LUDLOW, J.—This bill is filed against the defendants, commissioners named in an act of Assembly entitled “An act to incorporate the Philadelphia City Passenger Railway Company.” The bill sets forth the fact that the commissioners proceeded to the discharge of their duties, according to the terms of the act of Assembly by virtue of which they assumed to act, and then charges that the complainant was prevented from subscribing to the stock of the company by reason of the fraudulent acts of the commissioners, who had conspired to defraud the complainant and the public, first, by selecting an office for receiving the subscriptions located in an unusual place, inaccessible and unsuited to the proper performance of the duties of the commissioners; and secondly, by stationing upon the stairway and entrances leading to the office an organized gang of men, so as totally to preclude the access of the public to the room until the whole of the stock of the company had been sub-

scribed for. The bill then prays the court to declare the subscriptions already made fraudulent and void, and to direct the commissioners to make and receive new subscriptions in such manner and place as the court may direct.

The bill further prays for the interference of the court by injunction, and that the defendants may be restrained from making application to the Governor of the Commonwealth for letters patent, and from holding an election for directors, or from further proceeding with the organization of the company, either as commissioners or corporators, or as subscribers to or holders of the stock.

The very grave questions thus presented for our consideration will require us to review the various acts of Assembly incorporating the railway company, to investigate the merits of the case as disclosed upon the bill and affidavits presented upon the hearing of this motion, and to examine the various questions of law involved in the proper adjudication of the cause.

A review of the legislation which has brought this company into existence will exhibit a history as interesting as it is extraordinary.

The original act of incorporation passed the Senate and House of Representatives upon the same day, to wit: the 23d of March last; the Governor disapproved of the act, and returned it to the House in which it originated, with his objections.

Upon the 25th of March, notwithstanding the Executive disapproval, the bill passed the House of Representatives by the constitutional vote, and on the 26th of March, the bill having been sent to the Senate, also passed that body by a similar vote, and thus became a law of the State.

The act contains many sections not unlike those in other acts incorporating railway companies, but it entirely omits an important section, or clause of a section, which has been inserted in other acts, and which provides, "*That before the railway company shall commence to use the said streets, the consent of the Councils of the city of Philadelphia shall be first obtained.*"

Subsequently to the passage of what may be called the organic law, a supplement was introduced materially affecting the provisions of the original act, passed both branches of the legislature, and

received the Executive approval on the 31st of March, 1859. This supplement contains such remarkable departures from the provisions of the general railroad law of 1849, and also from the provisions of the act to which it is a supplement, as to call for a moment's examination.

By its first section it repeals the provisions of the general railroad law, requiring that twenty days notice shall be given by the commissioners therein named, of the time and place of opening books and receiving subscriptions for stock; and declares that *three* days or more, at the option of the commissioners, shall be the time required.

It authorizes the commissioners to *make* as well as receive subscriptions for the stock.

By its second section it grants "*the exclusive right to use and occupy for railroad purposes*" the streets, (Chestnut, Walnut, Front, Twenty-second, and Sixty-fifth,) and directs that the road shall be built with the form and gauge, and in the manner and mode already adopted by the Frankford and Southwark Passenger Railway Company, then places the construction of the road under the direction of the Chief Engineer of the city, and concludes as follows: "And so much of any law or ordinance as requires the proposed place, courses, styles of rail, and manner of laying the same, to be approved by the Board of Surveys and Regulations of said city, and all laws conflicting or inconsistent with this supplement, be and are hereby repealed;" thus, among other things, repealing the 5th section of the act to which this is a supplement, and which provides "that the said Councils (of this city) may, from time to time, by ordinance, establish such regulations as may be required for the paving, repairing, grading, culverting, and laying of gas and water pipes in and along said streets and avenues, and to prevent obstructions therein."

We have thus briefly viewed the legislation by virtue of which a company is to be created, because an intelligent comprehension of the questions of law hereafter discussed renders it necessary for us so to do.

If, however, upon the merits of this case, we have a serious doubt, that doubt would be fatal to the present application, and we must,

therefore, examine the facts as presented by the affidavits submitted.

The affidavits presented by the complainant establish the fact that an organized gang of men took possession of the stairway leading to the room occupied by the commissioners, that this gang had been marshalled for the purpose long before daylight on the morning of the 8th of April; that it was impossible for the public to reach the rooms of the commissioners until the whole of the stock had been taken; that the leaders and members of this organized gang partook of refreshments in a room, which must have been under the immediate notice of the commissioners, and free of charge, and that orders were communicated to this body of men from a room immediately adjoining that in which the commissioners sat.

The facts thus sworn to by the complainants' witnesses are substantially uncontradicted by any evidence in the case.

The defendants and each of them deny any confederacy or agreement, either directly or indirectly, with any person or persons whatever to do, or cause to be done, any illegal act or thing; and further, that the stock was not distributed by them in pursuance of any previous agreement or understanding, and yet they do not so contradict certain material facts contained in the affidavits of complainant as to bring us to the conclusion that the commissioners, or some one of their number, had not a knowledge of or did not indirectly consent to the transactions by which the public were excluded from the room in which the commissioners sat.

The commissioners, except one of them, and six subscribers for the stock of the company not commissioners, were together in the room at a very early hour upon the morning in question. Now the commissioners might have feared that unless they entered the office at an early hour entrance might thereafter become almost impossible; but this by no means explains the presence of the six subscribers, who have submitted their affidavits, nor of the six subscribers who have not submitted their affidavits, and who must also have been in company with the commissioners. I say they must have been with the commissioners, because, with the exception of those who subscribed for this stock, no person reached the room

in which the book was open, until after all the stock was taken, and the evidence is uncontradicted, that when the book was first opened the gang had possession of the stairway. One of the commissioners, Mr. Grove, reached the house at a later hour than his co-commissioners, and the evidence is again uncontradicted, that he was at once admitted to the room in the second story of the building, and that the stairway was at that time in possession of the gang. True, Mr. Grove says that his way was unobstructed, and that he did not know the persons upon the stairway, but Kneass explains the whole matter when he says that they, the gang, were directed, when Mr. Grove appeared, to admit him at once and without obstruction.

When the commissioners organized, they requested all persons not commissioners to leave the room, which they accordingly did, by walking into an adjoining room; now at this time the gang had possession of the stairway, and we cannot believe that this was not the case, otherwise some person or persons, not subscribers, would have been produced, who could have sworn to a state of facts which would have rebutted the idea of an organized resistance to the admission of the public.

One of the commissioners swears that *when the public had ceased to take the stock* the book was handed to the commissioners to enable them to subscribe; the affidavits of several witnesses establish the fact that a number of persons endeavored to reach the second story of the building, but were prevented from so doing; now the public could never have ceased making a demand for this stock while the book was open, and before it was handed to the commissioners, unless some obstruction prevented the accomplishment of that design; and if the statement of the commissioners is true, the explanation is, that the stairway being blockaded at the time the stock was being subscribed for, the demand of the public ceased, and that, too, before the whole of the stock was subscribed for. One of the subscribers attributed his success to his superior powers of endurance, but the evidence shows that his only competitors were the commissioners and the other successful subscribers who were with him in the second story room, at an early hour in the morning, *before* the gang took possession of the stairway; and this conclusion is strengthened by

the testimony of the commissioner just referred to, who says, the public demand ceased—that is—in time to allow the commissioners to subscribe to a large amount of the stock.

Having thus brought the commissioners and the successful subscribers together, and remembering that no person reached the commissioners' room from a very early hour in the morning, except Mr. Grove; (whose admission has been explained) we are not surprised to find that of the 10,000 shares of stock to be taken, 3,100 shares were subscribed for by the commissioners, 3,300 by the commissioners as attorneys for various persons, 700 shares by a son of one of the commissioners, and the balance was divided among the individuals who had, by an extraordinary coincidence, reached the room at a very early hour in the morning, and at or about the time the commissioners assembled, *and before the gang took possession of the stairway*. Now, when it is remembered that the leaders of this gang sat and drank at a table spread in the room adjoining that in which the commissioners sat, and were passing and repassing in and out of this room, how is it possible to believe that all of the commissioners were ignorant of this state of things, and if not ignorant, they, or some one or more of them countenanced and supported, and thereby became parties to the acts of those upon the stairway, (even supposing no preconcerted arrangement existed) in such a way as to require us to afford a remedy for the wrong committed, if we have power so to do.

With this view of the facts of this case as presented by the affidavits, it becomes our duty to determine the rights of these commissioners, so far as their power to subscribe for the stock of the company is concerned, for if, by the supplement to the original act of Assembly, they have the legal right to absorb the whole stock, then neither can the complainant nor the public object. We therefore confine our attention exclusively to the supplementary act, for it cannot be doubted that, by the terms of the original act, the power now referred to does not exist. By the letter of this supplement, the commissioners may "*make and receive subscription,*" and in our interpretation of the act, we must be governed by the general rules of law applicable to the construction of statutes,

by the law as it stood prior to the passage of the supplement, and by the language of the act itself. Everything which is within the intent of the makers of the act, though it be not within the letter, is as much within the act as if it was within the letter and intent also. *Walker vs. Deveraux*, 4 Paige, Ch. 252; *Stowell vs. Lord Zowch*, 1 Plow. 366; *Dwarris on Stat.*, 691; and when the intention of the law is doubtful and not clear, the judges ought to interpret the law to be what is most consonant to equity and least inconvenient. *Kerlin's lessee vs. Bull*, 1 Dal., 191.

And in the construction of a statute granting privileges to individuals, when there is an ambiguity or inconsistency in the language of the grant, if one construction bears against the public trade and public convenience and another abridges the grant, that must be adopted which favors the public convenience and trade. *Stormfeltz vs. The Manor Turnpike Company*, 1 Harris, 560.

Keeping these principles in view, let us examine the law as it stood prior to the passage of this supplement. Two of the judges of the Supreme Court at Nisi Prius have already so clearly stated the law, that it will be necessary simply to refer to their opinions upon this point. Judge Woodward, in *Martin Thomas vs. The Citizens Passenger Railroad*, says, "the commissioners acted under the provisions of our general railroad law of 19th February, 1849. The policy of that law is opposed to monopolies. It makes railroads incorporated under it public highways for purposes of transportation and travel, and it throws open the stock of new roads to the public in the fullest and fairest manner."—MS. June 15th, 1858. In *Brower vs. The Passenger Railroad Company*, Judge Strong says: "I concur fully with what was stated by Mr. Justice Woodward in *Thomas vs. The Citizens Passenger Railroad Company*, in regard to the policy of this enactment."

This, then, being the well settled interpretation of the statutes relating to the subject under consideration, can the words of this supplement alter the law? we think not, because the act simply confirms a right which, under the old law, the commissioners possessed, because at best there is an inconsistency in the terms of the act which, under the construction contended for by the counsel for

defendants, would enable them to exclude the public, and yet which in plain language directs the commissioners to advertise and give at least three days notice of the time for the opening of the books, and for subscriptions to be made for the stock of the company.

The interpretation contended for by defendants would, in a case of ambiguity and doubt, oblige the court to give a judicial sanction to a most odious feature of a law which at best creates a dangerous monopoly, and thus destroy the rights of the public and not maintain them, which we are bound, if possible, to do. 1 Harris, 560.

But the commissioners, if they enjoyed an exclusive privilege, have waived it by assuming to discharge their duties as public officers, and in a public manner, and by so doing, every principle of right requires them to act in good faith to the public.

Having thus disposed of the rights of the commissioners, and believing, as we do, that a wrong has been inflicted upon this complainant and the public, we are next to consider whether a remedy exists, and if so, whether it is to be applied through the instrumentality of courts administering the common law, or whether a Court of Chancery can, in the exercise of its well settled powers, afford the desired relief.

There is an important fact developed by the testimony in this cause, of which we must take judicial notice, to wit: *the actual existence of a corporation* created by the letters patent issued by the Governor of the State, in the name and by the authority of the Commonwealth, and it matters not, in our view, whether these letters patent were issued by the Executive before or after the bill was filed in the case, for the bill, as filed, makes the commissioners *alone* defendants, and, as the Governor has not been made a party to this bill, (even if the legal right so to do existed) the process of the court could not, in any contingency, *prevent* the issuing of the letters patent.

A corporation, therefore, in fact exists, and unless we possess the power to declare the act of the Governor null and void, and thus destroy the corporation, we cannot grant the present motion.

What, then, was the nature and extent of the power delegated to

the Governor under and by virtue of which the letters patent have been issued?

The act of 1849, known as the general railroad law, directs that the Governor of the Commonwealth shall grant letters patent when the commissioners certify that certain provisions of that law have been complied with. This act is not unlike others devolving upon the executive similar powers; as an illustration, we may refer to the general banking law, which confers upon the Executive powers precisely similar to those exercised in the present instance. Purdon Dig. 71, p. 11.

Can it be contended that when the legislative branch of the government has devolved upon the executive of the State duties of so responsible a nature, that that officer, representing, as he does, an independent branch of the government, is to execute them simply as a *ministerial* officer, and can exercise no discretion in the premises? This principle can hardly be maintained, for be it observed, the Governor of the Commonwealth is as much bound by his oath of office, to execute the laws of the commonwealth with fidelity, as any officer of either of the co-ordinate and also independent branches of the government, and to deny to him the right to exercise a sound discretion, is to make him the convenient instrument through and by means of which the grossest frauds might with impunity be perpetrated.

As an illustration of this principle, we will suppose that these commissioners had received the subscriptions for the stock of this company at the dead hour of the night, and in open and notorious violation of the organic law of their existence, can the proposition be successfully maintained that the Governor of the Commonwealth, as a ministerial officer, would be compelled to issue the letters patent, and thus legalize a fraud.

Would the Supreme Court, even if they assumed the power to grant a writ of mandamus, oblige the Governor, under such circumstances, to proceed to the execution of the letter of the law; if they would not and could not do so, then the only alternative is to recognize the existence of a discretionary power vested in the executive, and

to be exercised according to the dictates of his own conscience and judgment.

The Supreme Court have in substance asserted a principle in entire accordance with the views now suggested, in a reported case. In *Griffith vs. Cochran*, 5 Binn. 87, an application was made to the court for a *mandamus* to compel the Secretary of the Land Office to prepare and deliver land patents. Ch. J. Tilghman, in his opinion delivered in that case, says: "The Secretary of the Land Office may have reason to think that there has been something wrong in the conduct of the applicants for the land, or of the Deputy Surveyor, or other officer; and in such a case, it would be his duty to stop the calculations, until the matter is decided by the (property) board. If the Secretary had refused to make any calculations, or to take any step whereby the business of the applicant might be despatched, it would certainly have been our duty to compel him by *mandamus*," and it will be seen by a careful examination of this case, that there is a well-defined distinction recognized by the court between a mere ministerial act and a ministerial act coupled with a duty, and which involves the exercise of a discretionary power.

If, then, the Governor is vested with discretionary power, a great public duty devolves upon him; and in the execution of this duty, he may, if fraud exists, apply a most effective remedy, by arresting the progress of the fraud, and by a refusal to issue the letters patent, protect the rights of individuals and the public.

A proper respect for a co-ordinate branch of the government will not allow us to presume that the Governor deliberately refused to examine into the circumstances attending the discharge of the duties by the commissioners, defendants in the bill; had he been brought to the same conclusion upon facts presented, as we have been obliged to arrive at, we doubt not that he would have refused the letters patent; and even had he neglected so to do, we could not for that reason grant the relief prayed for in this bill, unless upon principles of equity of the most indisputable character, our duty obliged us to interfere.

The letters patent having been issued by the Governor, is there no other remedy existing by which the Executive himself may destroy the existence of this corporation, or attempt so to do, if it shall appear that the letters patent have been *unadvisedly* granted? Most undoubtedly, for the law provides the method, and the Executive may wield the power necessary to employ it. A corporation is an artificial body, constituted of several members, united by its franchises and liberties, which form its ligaments and essence. Lilly's Pr. Reg. 459. The Legislature of Pennsylvania may establish a corporation, that is, grant out a portion of the sovereign power of the State, and the corporation exists by virtue of a constitutional exercise of sovereign power. *Murphy vs. Farmers' Bank Schuylkill County*, 8 Harris, 419. And the Governor of the Commonwealth may direct his Attorney-General to test the validity of any letters patent, and submit to the proper judicial tribunals the question of fraud for their determination. *Murphy vs. Farmers' Bank Schuylkill County*, id. 419, if fraud exists, the fact is thus judicially determined. The question is presented at the suggestion of that branch of the government whose peculiar duty it is to see to it, that the sovereign power of the people is not abused, and it is determined by an appeal to another and entirely independent branch of the government, the judicial, whose peculiar provision it is to expound questions of law, and by its appropriate machinery resolve questions of fact. Thus, by the harmonious action of the different departments of the government, the interests of the people are protected; while by a departure from these obvious rules, a collision is produced, which must inevitably destroy the rights and sovereignty of the people, and eventually the government itself.

We can readily conceive of a question of fact being presented to the consideration of the Governor, connected with the issuing of letters patent, so embarrassed by conflicting testimony, as to render the satisfactory solution of it a matter of very great doubt and uncertainty. In such a case, for the executive to deny the letters patent, would be to assume a power which would destroy a right, without the intervention of a court and trial by jury; whereas, we have shown that the executive may grant the letters and *eo instanti*

direct his attorney-general to test by the judicial proceedings hereafter to be noticed, the question of fraud.

With the Governor of the commonwealth the responsibility rests, unless a court of chancery can interfere in the summary manner now invoked.

Has, then, a court of chancery the jurisdiction contended for? Let us examine this question.

It is an elementary doctrine, that courts of equity are governed by as well defined principles as courts of common law jurisdiction; they afford an effectual remedy, when the remedy at common law is imperfect, but they do not, as has sometimes been erroneously supposed, create a right which the common law denies; they give effectual redress for the infringement of existing rights, when, by reason of the special circumstances of the case, the redress at law would be inadequate. Adams' Eq. 50—58.

To ascertain the jurisdiction of a court of equity, we must be governed not only by general principles, but by established precedents both at law and in equity, for they contain the opinions of experienced and learned jurists; and if, upon the one hand, we discover a complete and adequate remedy at law, and upon the other a total denial of jurisdiction in a given class of cases, it would be an usurpation of power for us to seize a jurisdiction, in order to reach a wrong perpetrated in a particular case.

Is there, then, in this instance a complete remedy at law, or a remedy in its nature legal?

In England, when the crown has unadvisedly granted letters patent which ought not to have been granted, the remedy to repeal the charter is by *scire facias*, 2 Black, 348; 3 id. 261, and authorities cited; and if the crown grants the same office by letters patent dated on two consecutive days, the last are merely void, yet the patentee of the first letters patent must bring *sci. fa.* in order to avoid them by a judgment of the court. Grant on Corporations, p. 40, and authorities cited. And the better opinion seems now to be that the *sci. fa.* in this last case must issue upon the fiat of the attorney-general; and although the writ of *scire facias* is the proper remedy where there is an existing legal body capable of

acting, but who have been guilty of an abuse of the power entrusted to them, yet it cannot be doubted that an information in the nature of a *quo warranto* will reach that corporation, which is a body corporate *de facto*, but which takes to itself to act as a body corporate, but from some defect in its legal constitution cannot legally exercise the power affected to be used. *Rex vs. Passmore*, 3 T. R. 244, 245; *Regents of University of Maryland vs. Williams*, 9 Gill & Johns, 365; *Attorney General vs. Utica Insurance Company*, 2 Johns. Ch. 371; *Slee vs. Bloom*, 5 Johns. Ch. 380.

Nor can the existence of a corporation be attacked indirectly; if its life is to be taken, its vitality to be destroyed, it must be done by proceedings instituted directly against the corporation.

So exceedingly careful has our own Supreme Court been upon this point, that in *Hibernia Turnpike Co. vs. Henderson*, 8 S. & R., 223, although the court held that the commissioners could not dispense with the payment of a certain sum specified in the act of incorporation, and that if they permitted a subscription to be made without such payment, the contract was void, and the company could not recover the amount which ought to have been paid, the chief justice expressly avoided any insinuation against the validity of the charter, and Judge Duncan, in *Kishacoquillas and Centre Turnpike Railroad Company vs. McConaby*, 16 S. & R., 145, comments upon the case last cited, and broadly affirms the general doctrine to be, that a charter *fraudulently* obtained cannot be forfeited or *repealed*, except by *scire facias* or information in the nature of a *quo warranto*.

These, then, being the remedies intended to reach the class of cases to which this belongs, it is not surprising that we have searched in vain for a principle or precedent which would enable us to grant this motion, for while courts of chancery will hold corporations accountable in a great variety of cases for breaches of trust, it cannot, either directly or indirectly, divest corporations of their corporate character and existence.

Accordingly chancery never deals with the question of forfeiture. *Slee vs. Bloom*, 5 Johns. Ch., 380; *Attorney General vs. Earl of Clarendon*, 17 Ves. 491; *King vs. Whitmarsh*, 5 Term Rep., 85;

Attorney General vs. Utica Insurance Company, 2 Johns. Ch., 376; and in the State of New York, the late Chancellor Kent, who administered the duties of his high office with distinguished learning and wisdom, and with an experience unsurpassed by that of any other American equity lawyer or judge, never exercised or attempted to exercise such a jurisdiction, and it was at length conferred upon courts of chancery by statute. N. Y. Rev. Stat. 581, 583.

If chancery never interferes in questions of forfeiture, shall it go one step further, and assume to *repeal* an existing charter? Such a principle never has been asserted, nor can the most diligent search discover such a precedent. The nearest approach to it may be found in an expression of Chancellor Kent, in *Haight vs. Day*, 1 Johns. Ch., 18, when he expressed the opinion that commissioners acting fraudulently in the apportionment of stock, may be controlled by judicial proceeding, but he abstains from any expression of opinion upon the nature of the remedy to be applied. And Chancellor Walworth, in *Walker vs. Deveraux*, 4 Paige Ch. 246, points out a remedy, when he says, "if the apportionment of stock was absolutely void, he (the complainant) has mistaken his remedy, he should in that case have applied to the Supreme Court for a *mandamus*." That is, the complainant cannot ask for the interference of a court of equity, he must go to a court of law; *for any jurisdiction possessed by chancery can only be in aid of or ancillary to a remedy at law*.

Nor can the supplemental bill filed in this case extend our jurisdiction; for apart from the fact that it is filed against the corporators, and not the commissioners, if the original bill is fatally defective, and we could not make a valid decree upon it, it cannot be made the basis of a supplemental bill. *Chandler vs. Petit*, 1 Paige, 163; *Bank of Kentucky vs. Schuylkill Bank*, 1 Pars. Sel. Eq. Ch. 214.

The letters patent having been issued by the governor, we will not, under the prayer of this bill, now interfere with the corporation, and although the defendants may, if the circumstances of the case warranted it, be punished for a contempt for having applied to the Governor of the State for letters patent after bill filed and cautionary order, that punishment could not afford the relief which the

complainant seeks, and to grant the last prayer of the bill, and thereby restrain the defendants from organizing the company, would be to destroy the corporation itself, which in this proceeding we have no power to do; should we assume the power, we have already shown that we would prevent, by the order of a court of chancery, the defendants from the performance of a duty, which upon the common law side of our own court we would by *mandamus* compel them to perform.

The further consideration of the other points presented on the argument of the cause becomes now unnecessary, and, in conclusion, we can only say that, while, with our view of the facts of this case, we would consider ourselves obliged to afford relief, our view of the law, as administered in courts of equity, obliges us to deny the motion; to grant it would be to usurp a jurisdiction which we do not possess. There is, however, a satisfaction in knowing that the letters patent can be repealed, and the corporation destroyed, by a proceeding at law, to be instituted by the attorney general of the commonwealth.

The motion for a special injunction is refused.

In the District Court for the City and County of Philadelphia.

RICHARDS' ADMINISTRATOR vs. DAVIS.

1. A pledge for a loan of money to be repaid at a *fixed* time, may be sold by the pledgee, after the time for redemption has gone by, and a demand for repayment duly made, provided reasonable notice be also given to the pledger, of the time and place of the intended sale.
2. The law is the same where the pledge is a promissory note of a third person, when the note will not mature until long after the time fixed for repayment of the loan.

STROUD, J.—The matter in dispute in this case was referred, by agreement of the parties, to a referee, under the sixth section of the Act of Assembly relating to reference and arbitration, passed the 16th day of June, 1836.